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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,060	03/29/2001	John Zimmerman	US010076	5337

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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BRIARCLIFF MANOR, NY 10510

EXAMINER

FISH, JAMIESON W

ART UNIT	PAPER NUMBER
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2617

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/821,060

Applicant(s)

ZIMMERMAN, JOHN

Examiner

Jamieson W. Fish

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Detailed Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 08-29-2005 have been fully considered but they are not persuasive. The applicant argues that **1.** Graves does not disclose or suggest an activation mechanism (See Remarks Pg 5 Paragraph 3 Pg 7 Paragraph 2) **2.** Graves fails to disclose or suggest subject matter for viewer interaction to alter a topic selection (See Remarks Pg 6 Paragraph 2), **3.** Graves does not teach viewer selection and altering of weighted viewer preferences (See Remarks Pg 6 Paragraph 3), **4.** There is no disclosure or suggestion within Graves for a television viewer profile that changes with time (See Remarks Pg 6 Paragraph 5), **5.** Stas does not teach weighted viewer preferences (See Remarks Pg 6 Paragraph 7, See Remarks Pg 7 Paragraph 3), **6.** There is no viewer profile disclosed or suggested by Stas (See Remarks Pg 7 Paragraph 1), **7.** That the combination of Graves in view of Stas is improper (See Remarks Pg 7 Paragraph 3 Pg 8 Paragraph 1).

In response to argument **1**, claim 1 recites "wherein the television viewer profile weighted viewer preferences have an activation mechanism that allows for viewer selection and manipulation of the television viewer profile weighted viewer preferences." As disclosed in the Final Rejection Graves teaches where the user can select and manipulate the rankings with a remote control or keypad (See Graves Fig. 5, Fig. 6 and Col. 6 lines 60-67, Col. 7 lines 1-20), thus the remote control or keypad is interpreted to be an "activation mechanism." Graves also teaches where a user can tune to a preview channel to select and manipulate the rankings (See Graves Col. 7 lines 1-20), thus

tuning to a channel to select and manipulate the rankings is also an "activation mechanism." Although the examiner never relied on the screen appearing at designated times as the "activating mechanism," it is noted that a screen which appears at a designated time which allows the user to select and manipulate the television viewer profile weighted preferences is an "activation mechanism." Thus, Graves clearly teaches "wherein the television viewer profile weighted viewer preferences have an activation mechanism that allows for viewer selection and manipulation of the television viewer profile weighted viewer preferences."

In response to argument **2**, as disclosed in the Final Rejection Graves teaches changing the value of a displayed selected topic as not appropriate. Changing the value of a displayed selected topic is "to alter a topic selection presented."

In response to argument **3**, as disclosed in the Final Rejection Graves teaches by illustration in Fig. 6, the user selects preferences with Channel Up/Down keys and adjusts the weights of the preference bars with the volume controls (See Final Rejection Paragraph 6).

In response to argument **4**, as disclosed in the Final Rejection Graves teaches that a personal preference file is updated and this update is considered a change with time (See Final Rejection Paragraph 8). It is also noted that a television viewer profile that can change is a television viewer profile that changes with time since no change can occur instantaneously.

In response to argument **5**, as discussed in the Final rejection Stas teaches blocking or allowing a channel for a time period (See Final Rejection Paragraph 16).

The user blocks or allows a channel for a time period by assigning a Boolean value (Block or Allow) to a channel for the time period. Thus, the user is assigning a weight e.g. 1 or 0, based on whether he prefers the channel is to be allowed or to be blocked. Thus, Stas teaches weighted viewer preferences.

In response to argument 6, although it is not in the specification, in the Remarks the applicant defines "viewer profile" as "a tool that can be used by a viewer (See Pg 7 Paragraph 1)." Stas' invention is clearly a "tool that can be used by a viewer." Thus, Stas teaches a viewer profile.

In response to argument 7, claim 18 was rejected in the Final Rejection as being obvious over Stas in view of Graves (See Paragraph 18), not as obvious over Graves in view of Stas. Thus, the applicant's argument that this combination would result in Graves not being fit for its intended purpose is moot.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamieson W. Fish whose telephone number is 571-272-7307. The examiner can normally be reached on Monday-Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ngoc Vu can be reached on 571-272-7320. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JF 9-26-2005



NGOC-YEN VU
PRIMARY EXAMINER